

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

PP Docket No. 93-253

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF
SACO RIVER TELEGRAPH & TELEPHONE COMPANY

SACO RIVER TELEGRAPH & TELEPHONE COMPANY ("Saco River"), through its attorney, hereby submits reply comments in response to the *Notice of Proposed Rulemaking* ("Notice") implementing Section 309(j) of the Communications Act of 1934, as amended (the "Communications Act").¹ Saco River responds to the *Notice*, and the comments filed thereon, with respect to the use of auctions to award licenses for intermediate link frequencies and with respect to the treatment of "designated entities", particularly rural telephone companies, in auctioning spectrum for Personal Communications Services ("PCS").

Saco River, founded in 1889, is the oldest independent operating telephone company in the state of Maine, with approximately 7,000 access lines serving portions of seven municipalities (but not any entire municipality) and covering 120 square miles. Saco River's

¹ FCC 93-455, released October 12, 1993. The *Notice* called for comments to be filed by November 10, 1993, and reply comments to be filed by November 24, 1993.

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affiliate, Saco River Cellular Telephone Company, is the wireline cellular licensee in the Portsmouth-Dover-Rochester, New Hampshire NECMA. Saco River's ability to compete with larger companies and deeper pockets in bidding for PCS and other spectrum and still maintain the integrity of its telephone service is dependent upon receiving a real opportunity to participate in the auction process for spectrum-based services. Thus, Saco River will be affected by the adoption of rules in this proceeding.

Section 309(j)(2)(A) of the Communications Act requires that radio spectrum enable subscribers "to receive communications signals" or to "transmit directly communications signals"² before competitive bidding or auctions may to be used to award rights to that spectrum. The Federal Communications Commission ("Commission") has proposed in the Notice that "licenses used in services as an intermediate link in the provision of continuous, end-to-end service to a subscriber would be subject to competitive bidding." Notice at ¶ 29.

Saco River disagrees with this proposal and believes that licenses for point-to-point microwave links, in particular, should not be subject to auction. As American Telephone & Telegraph Co. ("AT&T") noted in its comments, mutually exclusive applications are rare in this service,³ since the current requirements for prior

2 47 U.S.C. § 309(j)(2)(A). Section 309 was amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993). However, Section 309(j)(1) also requires that the spectrum to be auctioned involve "mutually exclusive applications . . . for any initial license or construction permit" 47 U.S.C. § 309(j)(1).

3 See n.2, *supra* (discussing auction requirement of "mutually exclusive applications").

coordination allow for sharing of frequencies. AT&T Comments at 20-21. Under the coordination process, microwave links are allocated to applicants on a first-come, first-served basis. In addition, as Sprint Corporation ("Sprint") pointed out, it is "unworkable and unreasonable to bid each leg of internal communication microwave circuits used for network point-to-point communication even when the user is a LEC, IXC or a mobile service provider." Sprint Comments at 22. These microwave links are network components for many telecommunications companies, both wireline telephone companies and cellular and other mobile service providers. When point-to-point microwave is a component of a local exchange, interexchange or mobile service network, it should not be subject to license auctions; only when it is used to deliver service directly to end users should it even be considered for competitive bidding.⁴

New subsection 4(D) of Section 309(j) of the Communications Act requires the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services" 47 U.S.C.

§ 309(j)(4)(D). In the Notice, the Commission requests comment on whether a set-aside or other preferences should be utilized for these groups (the "designated entities"). See Notice at ¶¶ 72-81. In establishing PCS, the Commission proposed considering a reservation,

⁴ Many other commenters agree with this position. See, e.g., Comments of PacTel Corporation, Comments of Pacific Bell and Nevada Bell, Comments of U.S. Intelco Networks, Inc. ("USIN"), Comments of the Small Telephone Companies of Louisiana ("La. Telcos"), Comments of McCaw Cellular Communications, Inc., Comments of the National Rural Telecom Association ("NRTA") and Comments of Telephone and Data Systems, Inc. ("TDS").

or set-aside, of a 20 MHz frequency block (Block C) and a 10 MHz frequency block (Block D) for designated entities.⁵

Saco River believes that the Commission should set aside PCS Blocks C and D for auction only to designated entities, and agrees with USIN that Block C should be reserved exclusively for small telephone companies. USIN Comments at 15-17. The only way that small companies and rural telephone companies can meaningfully participate in PCS and bid individually for frequencies is if they are not competing with "deep pockets" for those frequencies. An additional benefit of this set-aside is, as Chickasaw Telephone Company ("Chickasaw") stated, that "the Commission's universal service goal would likewise be preserved, since rural carriers could compete against PCS providers trying to 'cherry pick' their customers". Chickasaw Comments at 4.⁶

The Commission's definition of a rural telephone company, however, is too restrictive.⁷ The cable/telephone company cross-

5 See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, CC Docket No. 90-314, FCC-451 (released October 22, 1993) (Second Report and Order), at n.61. These frequency blocks are allocated to serve Basic Trading Areas as defined by Rand McNally.

6 Many commenters support a set-aside or reservation of frequency blocks for designated entities. See, e.g., Joint Comments of the Rocky Mountain Telecommunications Association and the Western Rural Telephone Association ("Western Alliance"), Comments of the Small Business PCS Association, Comments of NRTA, Comments of La. Telcos, Comments of Rural Cellular Corporation ("Rural Cellular"), Comments of the Minority PCS Coalition and Comments of the National Telephone Cooperative Association ("NCTA").

7 The Commission proposes to define rural telephone companies as those carriers eligible for exemption under the telephone company-cable television cross-ownership restrictions in 47 C.F.R. § 63.58. Notice at ¶77 and n.54. Carriers eligible
(continued...)

ownership restrictions were designed to limit telephone company entry into the video market where that entry would inhibit competition. In PCS, however, telephone company entry into the market would not inhibit competition since the Commission proposes to license up to seven providers, all of which will have interconnection rights to the local network. See La. Telcos Comments at 11-12. Moreover, the Commission's proposal would eliminate from consideration those telephone companies which do serve rural areas but may not serve the "most" rural areas. See USIN Comments at 13-14.⁸ Thus, Saco River supports adoption of the definition of rural telephone companies proposed by the Rural Telephone Coalition,⁹ i.e., a rural telephone company is a local exchange carrier that either:

- (a) provides local exchange service to a local exchange study area that does not include either
 - (1) any incorporated municipality of 10,000 or more, or any part thereof, or
 - (2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;¹⁰
- or

7(...continued)

for the Section 63.58 rural exemption serve markets of 2,500 or less or do not serve any territory included in an urbanized area.

8 Saco River also concurs with USIN's comment that "under the terms of the statute, rural telephone companies should qualify for preferential treatment based upon two factors -- both as rural telephone companies and as small businesses Accordingly, the Commission should adopt a meaningful standard to ensure that the public interest policies specified by Congress are implemented." USIN Comments at 14.

9 The Rural Telephone Coalition is comprised of the National Rural Telecom Association, the National Telephone Cooperative Association and the Organization for the Protection and Advancement of Small Telephone Companies.

10 August 10, 1993 is the date on which the Omnibus Budget Reconciliation Act of 1993 became law.

- (b) provides telephone exchange service by wire to less than 10,000 access lines.

OPASTCO Comments at 5-6. See also NTCA Comments at 6-7.¹¹

Saco River concurs with OPASTCO and USIN in that small telephone companies should be entitled to participate in the bidding process as designated entities outside of their telephone service areas. USIN Comments at 17-18; OPASTCO Comments at 6-7. As USIN notes "there is no Congressional indication whatsoever that rural telephone companies should be confined to participate, or confined to participate on a preferential basis, within their telephone service areas" USIN Comments at 17. Removing such a geographic restriction will "further the stated Congressional objective to promote the participation of rural telephone companies in the provision of spectrum services." *Id.* If rural telephone companies are confined to bidding only in their telephone service areas they will be severely disadvantaged as compared to other designated entities that are not so geographically limited.

Finally, the Commission should clarify that its proposed PCS/cellular ownership restrictions¹² would not apply to PCS Blocks C and D, since this spectrum is set aside for rural telephone companies and other designated entities. See Western Alliance Comments at 6. Otherwise, these protected groups could find themselves prohibited from providing service on the spectrum specifically set aside for them, notwithstanding Congress' mandate.

¹¹ Rural Cellular even proposes that rural telephone companies be defined as local exchange telephone companies with fewer than 50,000 access lines. Rural Cellular Comments at 2.

¹² See *Second Report and Order*, *supra*, at ¶¶ 97-111.

In sum, Saco River urges the Commission to refrain from auctioning spectrum for intermediate link licenses, including point-to-point microwave licenses. The Commission is also urged to adopt Saco River's recommendations with respect to the treatment of designated entities, particularly rural telephone companies,¹³ so that rural telephone companies may actively participate in the new wireless technologies and bring innovative services to their constituents without undue disadvantage.

Respectfully submitted,

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¹³ Under the newly-proposed definition.